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IN THE

Supreme Court of the United States

OCTOBER TERM

1937

No. 374

TICONIC NATIONAL BANK,
PEOPLES-TICONIC NATIONAL BANK, and
ARTHUR G. PICHER,
AS RECEIVER OF BOTH SAID BANKS,
Petitioners,

v.

LOTTIE F. SPRAGUE and MARGARET DAVIS SPRAGUE,
Respondents.

Petition for Writ of Certiorari to The United States Circuit Court of Appeals for the first Circuit

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Reasons Against Granting Certiorari

May it Please the Court:

We object to the granting of this petition because the decisions of the courts below are just and right. A very

brief statement of the facts as we see them will make our position more clear.

The Federal Reserve Act containing section 11 (k), now U. S. C. Tit. 12 section 248 (k), was approved December 23, 1913.

December 30, 1926 the Ticonic National Bank received a permit to act under this section, and on the same day enacted by-laws establishing a trust department. R. 5.

From time to time bonds were segregated as shown. R. 3.

> "Early in 1931, prior to the acceptance of the Sprague trust by the Ticonic Bank, Mr. Charles W. Vigue, who was president and remained president and director of the Peoples Bank, had become president and director of the Ticonic Bank and an officer of its trust department; (that) he assumed active management and control of the latter bank's affairs; (that) several other gentlemen were and remained directors of both banks; and (that) both banks were practically controlled by one stock ownership." R. 59.

March 28, 1931 the Sprague indenture of trust was established and under it the Ticonic Bank received the fund of $5022.18. R, 2, 9, 13, 14, 20.

April 2, 1931 the directors of the Ticonic Bank confirmed the execution of the trust. Mr. Vigue, president of both banks, attended this meeting. R. 38.

August 3, 1931 the two banks consolidated. R. 21, and par. 11 of Defendants' answer R. 14.

Upon this consolidation by virtue of U. S. C. Tit. 12 Sec. 34 the Peoples Bank, which then called itself the Peoples-Ticonic, took all assets and securities of the Ticonic subject to all liens, rights and equities of third parties.

March 4, 1933 the Peoples-Ticonic Bank was closed by order of the President of the United States.

March 25, 1933 Mr. Charles W. Vigue, president of the bank, was appointed conservator. R. 4.

November 6, 1933 Mr. Arthur G. Picher, the present petitioner, was appointed receiver. R. 4.

June 28, 1934 he was appointed receiver of the Ticonic. R. 4. After Mr. Picher's appointment he found the vote segregating "$20,000 Kingdom of Denmark 6s, due 1942." R. 34. These bonds were then "with the special liquidator of securities, for sale," and Mr. Picher knew "that they bore a mark 'In trust Box 1080' ". R 34, 35.

But it appears that long before this the Peoples-Ticonic had taken the whole list of Ticonic trust bonds and used them for other purposes. R. 35.

But they still remained in the Peoples-Ticonic Bank and came into the hands of the receiver where we found they were before bringing this suit. R. 34, 35.

Regular payments of $50 per month were made to Margaret Davis Sprague down to August 6, 1934. Defendant's Exhibit 3. These include payments made by both banks, by the conservator, and by the receiver.

This suit was brought upon the theory that the Ticonic Bank was authorized to act under section 248 (k); that the bonds were lawfully segregated; that the fund was turned over to the bank as trustee; that as the bank never invested nor deposited a single dollar in accordance with the indenture the funds remained uninvested and on failure of the bank the owners of the funds were entitled to a lien on the segregated bonds, which we were entitled to enforce and the suit was brought for that purpose. We further assumed that the ordinary rights, duties and obligations pertaining to fiduciaries and their sureties arose in this case.

The courts below agreed with all our contentions and we believe this court will find those decisions correct.

If certiorari is granted we will of course consider the other suggestions raised by counsel for the comptroller.

The plain justice of the decision seems however to make review unnecessary.

Reasons For Granting Certiorari

Counsel suggest that certiorari should be granted

> "in order that the present doubt as to the correct rules of law to follow may be settled."

With this fine altruistic sentiment we concur. If the crude and crazy notions displayed in the conduct of this trust, by both banks, the conservator and the receiver, apparently with the approval of the comptroller's office, are really held by any substantial part of the banking world then it is high time that this court review the law and repeat a few fundamental principles.

To bring about review on this ground we offer our assistance to the learned counsel for the comptroller and venture to point out a few reasons which they have, inadvertently no doubt, omitted.

While this case involves only one trust it will be noted R. 46 that there are fourteen others in consimili casu.

The matter is part of a great banking fiasco which became a fiasco because it defied and violated all statutes, laws, rules and regulations in sight. So far as this case and No. 408 afford opportunity we believe it would be a great public service for this court to restate such elementary principles as are applicable.

Monopoly banking, arising from ownership of numerous banks by one corporate stockholder, lies at the root of the whole situation. We have presented and discussed this feature in our petition and brief in No. 408 and refer to that brief as an expression of views which we still hold.

The conduct of both banks, the conservator and the receiver, has been wrong all the way from the very beginning.

As all were under the supervision and control of the comptroller we feel like laying responsibility at the door of his office.

The Ticonic Bank never observed the terms of the indenture. It bought no securities and did not deposit one

thousand dollars in its savings department as provided by the indenture. R. 49.

It simply deposited the fund in its commercial department and used it like all other common deposits. R. 20.

When the consolidation took place, August 3, 1931, The Ticonic Bank delivered and the Peoples Bank received every dollar of cash and every security held by the Ticonic in connection with all its trusts. R. 48, 49.

The Peoples simply took possession of everything even continuing to use the Ticonic ledger sheets. R. 49.

But the Peoples never formally or nominally became trustee. Its president and trust officer sent checks regularly to the Spragues who probably supposed that the Peoples, now calling itself Peoples-Ticonic, had lawfully succeeded the Ticonic as trustee. R. 49.

Then the conservator and lastly the receiver continued sending these monthly checks down to August, 1934.

All the above is so glaringly and obviously wrong that it would require no comment nor review were it not for the fact that it appears to have been done with the consent and approval of the comptroller's office which now attempts to uphold and support these transactions.

But the comptroller goes further. Before suit was brought and during all the litigation down to the present moment he has persistently denied existence of a trust and especially denies a lien on the segregated bonds. Vide his first specification of error p 5 of his petition, and the first assignment of error. R. 53, and par. 11 of his answer. R. 14.

Consistently with his denial of the trust the comptroller has persisted in treating these plaintiffs who are respectively trustor and beneficiary as common creditors of the Peoples-Ticonic National Bank. Vide assignment 2 R. 53.

Very intriguing is his reasoning on page 70 of his petition where he reaches the conclusion that

> "the lien against the Kingdom of Denmark bonds was automatically released."

At the bottom of p 18 of his petition it is pointed out that the Kingdom of Denmark bonds "were owned by the Peoples-Ticonic National Bank."

But the title came from the Ticonic National Bank under the consolidation of August 3, 1931 and by U. S. C. Tit. 12 section 34

> "the said consolidated national bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the national bank so consolidated therewith."

Both banks, the conservator and the receiver, all acting under the supervision and control of the comptroller, have continually treated the Spragues as common creditors and now insist upon settling with them as such. All this is in utter disregard of their rights under the indenture of trust. Further the receiver should never have attempted to continue the administration of this trust. Immediately on his appointment he should have taken steps to turn over the trust estate to a properly chosen successor. How far he came from this is well shown by his answer R. 13 especially par. 11. And all this by direction of the comptroller.

Verily there should be a review

> "in order that the present doubt as to the correct rules of law to follow may be settled."

We second petitioners' motion. Let certiorari be granted.

Respectfully submitted,

LOTTIE F. SPRAGUE

MARGARET DAVIS SPRAGUE

HARVEY D. EATON,

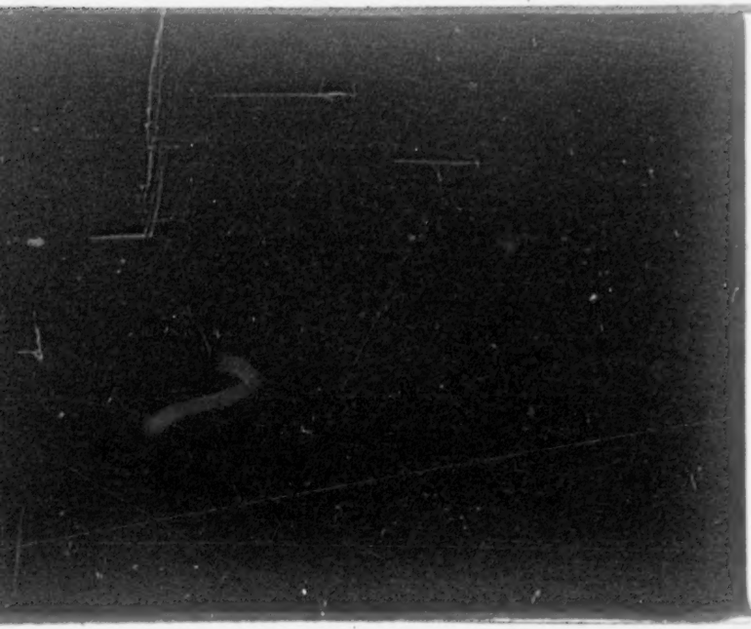
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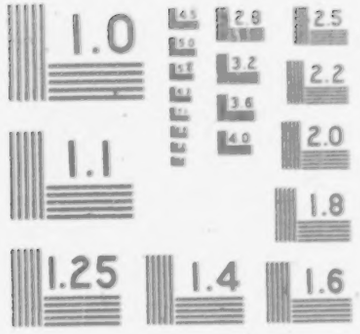
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Brief For Respondents

A Correction and Stipulation

HARVEY D. EATON,
Attorney for Respondents

TICONIC NATIONAL BANK, ET ALS

v.

LOTTIE F. SPRAGUE, ET AL

No. 374

CORRECTION

In the above entitled case the paragraph on page 3 of the brief for respondents beginning "Regular payments &c" should be changed to read as follows:

> Regular payments of $50 per month were made to Margaret Davis Sprague by the bank from April, 1931 to March, 1933. No payments were made by the Conservator but beginning December 1, 1933 the Receiver made regular monthly payments to and including August, 1934.

The statement in regard to the Conservator near the middle of page 5 should be corrected accordingly.

STIPULATION

It is agreed that the above statement of facts is correct and that defendants' exhibit 3 need not be sent up.

F. HAROLD DUBORD

Attorney for Petitioners

HARVEY D. EATON

Attorney for Respondents